

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

SCOTTY ROACH,)	
)	
Petitioner,)	
)	1:15CV783
v.)	6:93CR122-2
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

RECOMMENDATION AND ORDER
OF UNITED STATES MAGISTRATE JUDGE

Petitioner, a federal prisoner, submitted a document entitled as a Motion seeking a sentence reduction under 18 U.S.C. § 3582. However, in his Motion, Petitioner seeks to attack the conviction or sentence he received in this Court under recent case law from the United States Supreme Court. The document he filed is not a recognizable method for achieving this goal. Instead, the proper avenue for such an attack is ordinarily a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. For this reason, the Court will construe the submission as such a motion. Unfortunately, the Motion cannot be further processed because Petitioner did not use the proper forms and because court records reveal that Petitioner previously attacked the same conviction and sentence in a § 2255 Motion in this Court [1:98CV432]. Consequently, Petitioner must move in the Fourth Circuit Court of Appeals for an order authorizing this district court to consider the current Motion. This is required by 28 U.S.C. § 2255 and 28 U.S.C. § 2244. See AO

243 (MDNC 10/07), Instructions, ¶ (4), which is enclosed. Because of this pleading failure, this particular Motion should be filed and then dismissed.

IT IS THEREFORE RECOMMENDED that this action be filed and then dismissed *sua sponte* for failure to obtain certification for this § 2255 application by filing a Motion for Authorization in the court of appeals as required by 28 U.S.C. §§ 2255 and 2244 and Fourth Circuit Local Rule 22(d).

IT IS THEREFORE ORDERED that the Clerk send Petitioner a copy of this Recommendation, instruction forms for filing § 2255 motions in this Court and Motions for Authorization in the court of appeals, and four copies of § 2255 motion forms (more copies will be sent on request). Petitioner should keep the original and two copies of the § 2255 motion which can be submitted in this Court if Petitioner obtains approval from the Fourth Circuit.

This, the 28th day of September, 2015.



Joe L. Webster
United States Magistrate Judge